Single Bench

(3)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISHGARH AT BILASPUR

W.P. No.4135 /04

M.A. Hakim
S/o Abdul Rahim
Aged about 63 years
Retd. First Class Painter(Skilled Labour)
Public Works Deptt.
R/o: Byron Bazar,
Raiupur. .... **Petitioner**

Vs.

1. State of M.P.
Through: Secretary,
Public Works Deptt.,
Vallabh Bhavan,
Bhopal.

2. State of Chhattisgarh
Through:
Secretary
Public Works Deptt.,
D.K.Bhavan, Raipur.

3. Chief Engineer,
Public Works Deptt.,
Near Akashwani,
Nalghar Chowk,
Raipur (CG) ... **Respondents**

P.R. No. 4116/04 Sanjeev Shrivastava
Presented by Shri
dated

WRIT PETITION UNDER ARTICLE 226/ 227 OF THE CONSTITUTION OF INDIA FOR GRANT OF WRIT OF MANDAMUS, CERTIORARI OR DIRECTION OF LIKE NATURE.

(51)

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : Hon'ble Shri Justice Satish K. Agnihortri

WRIT PETITION NO. 4135 OF 2004

Petitioner : M.A. Hakim

versus

Respondents : State of Madhya Pradesh (Now C.G.) and others

Present : Mr. N.K. Vyas, counsel for the petitioner.
Mrs. Anju Ahuja, Deputy Government Advocate for the respondents/State.

ORDER

(Passed on 28th of August, 2006)

1. Admittedly, the petitioner was appointed on daily wages basis as Painter vide order dated 15.7.1963 (Annexure P/6). The petitioner continued to work on the same post. The petitioner was absorbed as work charged employee under the provisions of the Work Charged and Contingency Paid Employee Service Conditions Rules, 1975 on 31.12.1998. The petitioner was accordingly paid salary on monthly basis after having

completed 25 years of service as Work Charged Employee from 15.7.1963. Services of the petitioner was regularised by order dated 31.12.1998 in the Work Charged establishment. (Annexure P/3)

2. The petitioner claims pension on the basis of Rule 6 (3) of M.P./C.G. (Work-charged and Contingency Paid Employees) Pension Rules, 1979. Rule 6 (3) provides that on absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1974 onwards, if such service is of less than six years shall be counted for pension as if such service was rendered in a regular post.

3. It is admitted that the petitioner was absorbed as temporary employee against regular pensionable post vide order dated 13.12.1998, which is evident from the order of regularization dated 31.12.1998 (Annexure P/3). The regularization was granted on completion of 25 years of services in Work Charged Establishment. Rules 6 of the Pension Rules 1979, provides for commencement of qualifying service for grant of Pension. Rules 6 of the Rules 1979 is quoted below:-

"6. Commencement of qualifying service:- (1) Subject to the provisions of chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 of section IV of Madhya

Pradesh New Pension Rules, 1951, as the case may be, for calculating qualifying service of a permanent employee who retired as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.

(2) On absorption of a permanent employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1959 onwards shall be counted for Pension as if such service was rendered in a regular post.

(3) on absorption of temporary employee without interruption against any regular pensionable post, the service rendered with effect from 1st January, 1974 onwards, if such service is of less than six years shall be counted for pension as if such service was rendered in a regular post."

4. Mrs. Anju Ahuja, learned Deputy Government Advocate, appearing for the respondents/State is not in a position to produce any other circular except, the Pension Rules 1979, which are applicable in the case of the petitioner. The contention of the respondents that the petitioner has not completed 10 years of services as regular employee is not supported by any Rule or circular, so as to disqualify work charged employee from grant of pension. From bare reading

of the provisions of law, it is clear that the petitioner is entitled to pension, as admissible, in accordance with the aforesaid Pension Rule, 1979.

5. For the aforesaid reasons, this petition is allowed. It is directed that the admissible pension shall be released within a period of two months from today, as the petitioner has retired long back from service on 31.12.1998, immediately after his regularization. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Subhash